

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JONATHAN McCORD,
and others similarly situated,

Plaintiff,

v.

ORDER

09-cv-227-bbc

BRADLEY HOMPE, official capacity;
CHERYL WEBSTER, official capacity;
STEVE MOHR;

Defendants.

Initially, plaintiff Jonathan McCord brought this civil action against defendants Bradley Hompe, Cheryl Webster and Steve Mohr in the Circuit Court for Chippewa County, Wisconsin for violations of his right to freely exercise his religion under the First Amendment, the due process and equal protection clause of the Fourteenth Amendment and the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000c-1.

On April 16, 2009, defendants filed a notice of removal under 28 U.S.C. § 1446(a) alleging that this court has jurisdiction under 28 U.S.C. § 1131 and 1343. Plaintiff has filed a letter stating he opposes removal, which I will construe as a motion to remand this case to state court under 28 U.S.C. § 1447(c). Plaintiff's motion will be denied.

Plaintiff has not put forward any argument that suggests that removal was improper or unwarranted. The sole argument he raises for remanding his case is the following: “Last year I filed a § 1983 lawsuit, and you told me I could not proceed in Federal Court because of my unpaid filing fee. . . I ask that you stay true to your word in not allowing my case to proceed in Federal Court.” The fact that plaintiff was denied leave to proceed in a previous case after the court found that plaintiff was not paying filing fees he owed under the Prison Litigation Reform Act despite having the money to do so has no bearing on whether this case may go forward in federal court. In this case, defendants paid the full filing fee. In addition, plaintiff’s claims clearly arise under federal law and therefore this court has original jurisdiction over these claims. Accordingly, plaintiff’s motion to remand this case under 28 U.S.C. § 1447 (c) will be denied and his complaint will be screened pursuant to 28 U.S.C. § 1915 as soon as this court’s calender permits.

ORDER

IT IS ORDERED that plaintiff’s motion to remand this case to the Circuit Court of Chippewa County under 28 U.S.C. § 1447 (c), dkt # 7, is DENIED. As soon as the court’s calendar permits, plaintiff’s complaint will be screened pursuant to 28 U.S.C. § 1915A to determine whether the case must be dismissed either because the complaint is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief

against a defendant who is immune from such relief. The parties will be notified promptly when such a decision has been made.

Entered this 24th day of April, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge